

Exhibit D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:

DIISOCYANATES ANTITRUST LITIGATION,

RHINO LININGS CORPORATION, et al.,

Plaintiffs,

Civil Action

vs.

No. 18-1001

BASF SE, et al.,

Defendants.

Transcript of STATUS CONFERENCE Proceedings on
November 15, 2021, United States District Court, Pittsburgh,
Pennsylvania, before The Hon. Donetta W. Ambrose, United
States District Judge.

APPEARANCES:

Counsel of record for this hearing can be found as an
attachment at Docket No. 578

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Proceedings recorded by mechanical stenography; transcript
produced by computer-aided transcription

P R O C E E D I N G S

(Proceedings held via telephone; November 15, 2021.)

THE COURT: Hello, everyone. This is Judge Ambrose. I guess we're ready to begin. Well, I've looked at all your position letters, and thank you for those. They're always very informative. And I think there are probably a number of things that several of you want to discuss today, so maybe we'll start with the plaintiffs.

Please, just identify yourself, because we have a court reporter; and it will be easier for her if she knows who is speaking. So I'll start with the plaintiff.

MS. JONES: Your Honor, it's good to talk to you. Megan Jones for Hausfeld. I'm happy to start this morning with a discovery update. As you know, the court adopted Judge Francis' report and recommendation. That has advanced the ball. It gave valuable guidance about search terms, and that's kind of where we are this morning.

Plaintiff has reached out to defendants about what search terms they're going to use in the TAR tool. And, you know, just to orient the court, the search terms chooses what kind of documents go into the TAR tool. So it's foundational. It's a funnel. It either goes into the TAR tool to be reviewed, or it's left on the side.

And so where we are in that process is that defendants have given plaintiffs search terms that started

1 around October 27. We are heartened that defendants added
2 terms in accordance with Judge Francis' guidance. Dow and
3 Huntsman, for example, added defendants' name. So now Dow
4 is going to search for BASF in its documents, and we think
5 that's a valuable piece of progress.

6 We are evaluating those terms now, and we're trying
7 to pull out the ones that actually will matter in terms of
8 selecting documents that we think are foundational to the
9 case.

10 What we're looking to do is find out from the court
11 the timing upon which to raise those issues. We think now
12 is more efficient because, again, it's going to choose what
13 goes in and trains the tool.

14 And so, you know, just as a for instance, some of
15 the search terms that defendants are still declining are,
16 you know, "price within 10 of agreed," "meet within ten of
17 market division," "conspire," "conspiracy." We're still
18 tussling over those conspiratorial terms. And we would
19 prefer to resolve those now. Doing it later is going to be,
20 we think, less efficient.

21 Testing the null set, which is just another fancy
22 word for the documents that don't have any search terms that
23 hit on them, you know, we think that choosing 1,200
24 documents out of those 4 million is not going to be
25 sufficient to address the profound issues that Judge Francis

1 identified in his report.

2 And so we would like to tee those up now. We do
3 not think it's going to be as many as when we started this
4 summer. So we think that the process that the court
5 outlined worked. We think it's going to be, you know, under
6 50, probably less than 20 terms that we're fighting over.
7 We're still evaluating that.

8 But we would like to do it now. We would like to
9 either -- we think that this court has a sufficient
10 understanding of the substance of this case to have this
11 court decide whether "price within 10 of agreed" should be a
12 search term; or if it's the court's preference, to give it
13 to Judge Francis and have him decide those disputes. But we
14 would like to do that now versus later, because we think
15 that it will affect the documents that the TAR tool
16 identifies as relevant.

17 And so that's kind of where we are in terms of the
18 TAR process that this court has ordered. You know, again,
19 we just got the search terms from defendant three weeks ago.
20 We're evaluating them right now, but we can already see some
21 flags that will need to get resolved; and we would like some
22 guidance from this court about who and when, if that makes
23 sense.

24 THE COURT: Sure. You know, maybe it might be
25 more efficient if we -- that is a discreet issue from other

1 issues that you wanted to present. Maybe it might make more
2 sense to have Mr. Marovitz address that at this point. And
3 you can always talk about other things after he does.

4 I have to say, you know, I think that given
5 Judge Francis' guidance on search terms in his report, it
6 would probably be my preference to have this go back to him
7 at the first instance. I think that makes more sense.

8 But, you know, I'll listen to whatever you have to
9 say about that or Mr. Marovitz. But if you're finished on
10 that issue, is it all right to turn to Mr. Marovitz to
11 respond to that now?

12 MS. JONES: I think that makes sense, Your Honor,
13 and then we can proceed issue by issue, if that makes sense.

14 THE COURT: Sure. Mr. Marovitz.

15 MR. MAROVITZ: Judge, thanks very much,
16 Andy Marovitz. And thanks, Megan, for that. I do want to
17 say, I feel a little ambushed by this, and I think probably
18 the other defense counsel do, as well.

19 I sent a note, as I often do before these
20 conferences, to plaintiffs' lawyers, you know, last Thursday
21 saying, "Hey, what are you going to raise during the status
22 conference, so that we can have a decent productive
23 discussion in front of the court?" And I said, "For the
24 defendants, we just intend to raise issues about the
25 document production efforts following the report and

1 recommendation." And I didn't receive any response at all.
2 So this is really the first time we're hearing that the
3 plaintiffs are interested in raising any kind of a position
4 like this in front of the court at this time.

5 We would be happy to address it. I just think
6 that -- I think it's good practice for counsel to actually
7 talk to each other before these calls so that we can each
8 address it, you know, with the items in mind and so we can
9 have a robust discussion about it.

10 I do think that -- and I will turn this over to
11 counsel that handled most of the search term and TAR issues
12 to respond directly to this. But I do think what the
13 plaintiffs are asking for is not consistent with the special
14 master's report and recommendation, and as well as with this
15 court's order that sets forth the schedule for these things
16 to be decided.

17 And, again, it seems to me it's a request by the
18 plaintiffs seeking to impose the way that they think our
19 process should be run upon the defendants, which was
20 rejected. But let me ask, I guess, the lawyers that really
21 handled this issue before the special master to address it,
22 if you don't mind, Judge.

23 THE COURT: Sure. I mean, I'm not listening to
24 substantive arguments at this point. I hope you all
25 understand that. What we're talking about is whether or not

1 the plaintiffs are saying that there is still these -- there
2 are still these unresolved search term issues and that they
3 want to have it resolved immediately and they think I could
4 do it, but they're happy to do it before Judge Francis. And
5 I just really want to address that rather than the substance
6 of whether or not the plaintiffs' position has merit.

7 MR. ATKINS: Your Honor, this is Alden Atkins for
8 the Wanhua defendants, and I'm the one who led the work on
9 behalf of defendants about these TAR issues.

10 Your Honor, we're surprised to learn that the
11 plaintiffs think that there are unresolved issues, because
12 we've litigated it. Judge Francis decided, you decided, and
13 so we've already litigated this. We spent a year
14 negotiating search terms with plaintiffs. They wouldn't
15 budge. They asked Judge Francis and then you to adopt all
16 of their search terms, and you denied their motion.

17 What you said was that we, the defendants, would
18 decide search terms and then we would include some testing
19 at the end of our efforts to our search and our document
20 productions to determine whether there was an unreasonable
21 amount of documents left behind. So we're quite startled,
22 frankly, to hear them try yet again to impose search terms
23 on us. It's been decided.

24 THE COURT: Well, why don't we do this, I mean,
25 because I do think it's a good idea, as Mr. Marovitz

1 suggested, that you talk about this. Why don't we, like,
2 give it a couple weeks for you to -- for the plaintiffs and
3 the defendants to speak about this.

4 And, I mean, I'm not going to preclude the
5 defendants from filing any motions. If they want to file
6 them, certainly I think they should be entitled to do that.
7 But, again, my feeling is that this, in the first instance,
8 should go to the special master. So let me get back to
9 Ms. Jones and see how she responds to that.

10 MS. JONES: Sure. Thank you, Your Honor. And
11 Mr. Marovitz is absolutely correct, and he sent an e-mail
12 saying that we were going to discuss document production
13 efforts. We thought this was part and parcel of that. So
14 no one is trying to hide the ball here.

15 We are happy to keep talking about search terms,
16 and we have done so. We've reached out. We had to ask them
17 for native formats. They sent it to us in PDF, and we
18 couldn't search them. So it should come as no surprise to
19 all of them, we asked him for a copy of a native production
20 of the search terms, that there's still some issues here.

21 I am happy to keep talking. I'm happy to do that
22 with the help of Judge Francis. I think it might help speed
23 up things. I am worried about the timing, Your Honor. If
24 you say go back and talk for a couple weeks, I'm afraid that
25 the defendants may start or are starting their TAR process

1 and leaving these terms out. And so the only thing that I
2 would ask is for guidance on the timing and that we're not
3 waiving our rights to add terms later.

4 THE COURT: Yeah. I agree that counsel are
5 starting that search, absolutely. I think they've
6 probably -- they probably agree that within the next week,
7 they're about to start that. Is that correct, Mr. Marovitz?

8 MR. MAROVITZ: Yeah. I mean, that ship has sailed
9 for us. We've already started. I mean, that's -- because
10 we have told the court, I mean, just -- pardon me. We've
11 told the plaintiffs that we had intended to, for the
12 domestic defendants, try to be substantially complete with
13 our productions by March 21. And so I know that the
14 domestic defendants have been working hard. And we do not
15 intend to wait until the last minute to start and to move
16 along.

17 As the court knows, we've been producing a lot of
18 documents. And I think as of this point, the domestic
19 defendants have produced something on the order of 645,000
20 documents of unstructured data; and the only way we can do
21 that is if we have started. And at least for BASF
22 corporation and for some of the other domestic defendants,
23 that process has started.

24 THE COURT: Well, I mean, it started; and
25 production, I guess, will begin in the coming weeks. I

1 don't know what to say, except that maybe you don't need a
2 couple weeks to talk about this. But even if you took a
3 couple days to talk about it, it still seems as if it's too
4 late. But, I mean, I suppose that can always be remedied at
5 some point.

6 MS. JONES: Your Honor, the helpful point of fact
7 is defendants added search terms six months after they sent
8 us our initial -- their initial search terms. And so as
9 long as the parties agree that search terms may be added
10 at -- upon resolution, I think that there is some precedent
11 in the case for search terms being added after TAR has
12 begun. We certainly did it when they reached out to us and
13 said, "Please add these terms." We took 100 percent of
14 their terms.

15 And I am sorry that we have to keep coming back to
16 you to get terms added, but that's where we are, especially
17 when it's, you know, "price within 10 of agreed." But we
18 will, as plaintiffs, reach out to Judge Francis after this
19 hearing to see how quickly he can become involved, because
20 we think it makes sense, you know, we hope that documents
21 are produced and substantially produced by March; and we
22 don't want to start over then. So we'll work with
23 defendants on trying to get resolution of these additional
24 terms.

25 THE COURT: Well, is there any possibility that

1 you can do that rather quickly, reach out and talk to the
2 defendants and see if you can get some resolution? I mean,
3 I know you're all very busy people. But do you think that
4 can be done? You know, I know we're getting into holiday
5 season, and that makes everything difficult, besides all the
6 other difficulties that exist in this case.

7 But if you can talk as soon as possible, reach out
8 to Judge Francis if there's no agreement, and see if he can
9 react quickly, maybe, you know. His familiarity with the
10 case is certainly going to help him in terms of timing. So
11 I don't know. What do you think about that?

12 MS. JONES: On behalf of plaintiffs, we will
13 absolutely do that, Your Honor; and we will put personnel on
14 this issue so that we'll get it resolved as quickly as
15 possible.

16 THE COURT: Okay. Mr. Marovitz?

17 MR. MAROVITZ: We're always willing and happy to
18 talk to the plaintiffs about discovery issues, Judge.

19 THE COURT: Okay. Do you want to move on then to
20 another issue, plaintiffs?

21 MR. HARTLEY: Yes, Your Honor. Thank you. This
22 is Jason Hartley speaking also for plaintiffs. There were a
23 couple other discovery issues regarding the production of
24 calendars, go get documents, and custodians.

25 Unlike the search terms, our position is that we

1 should wait to raise these issues until after we review the
2 documents that defendants produce when there's a more
3 fully-developed record, and we might be better able to
4 identify for the deficiencies. We think this is kind of not
5 a threshold issue like search terms going into the TAR tool,
6 but more of a review issue. Some of the defendants,
7 however, asked us to raise those issues now. So, again,
8 we're asking the court for some guidance on the timing of
9 that.

10 THE COURT: Well, look, the defendants may have
11 asked you to raise the issues now, but I don't think they
12 control exactly what's going on here in terms of timing.
13 So, I mean, if you think you need to wait until there's
14 substantial production completion, you may not need to take
15 further steps.

16 And if you do, then you will. I mean, I don't -- I
17 don't want to do something that might not be necessary. So
18 I don't have a problem with that. I mean, I don't know who
19 wants to respond to that. I'm glad to hear you.

20 MR. ATKINS: Your Honor, this is Alden Atkins,
21 again, for the Wanhua defendants. I suspect that
22 Mr. Hartley is referring to me as someone who told them to
23 raise it promptly.

24 There are two issues upon which we've reached
25 agreement during our discovery negotiations. One of them

1 relates to calendars. The other one relates to, without
2 getting into details, additional search terms applied to a
3 subset of our custodians. We reached an agreement with the
4 plaintiffs. It's documented. We have acted in reliance
5 upon that, and we are moving forward.

6 And what we understand now is that they want to
7 renege on the agreements we've reached. And, Your Honor,
8 I'll just say that if we can't rely on the agreements we
9 reached with the plaintiffs as we go along through the
10 discovery process, this is going to be a very painful
11 process that's going to require the court's intervention
12 quite regularly. We need to be able to rely upon the
13 agreements we reach.

14 THE COURT: Mr. Hartley, anything you want to say
15 in response to that? I mean, I understand you're saying to
16 me that you're not sure yet whether you're going to need to
17 take further steps and that's why you don't want to raise
18 the issue.

19 MR. HARTLEY: I think that's ultimately, I think,
20 fair representation. What's not fair is Mr. Alden's --
21 Mr. Atkins' representation that we don't honor agreements.
22 When we made the agreements, it was before defendants,
23 including Wanhua, advised they would be using TAR or a
24 severely narrow set of search terms; and we specifically
25 reserved our rights.

1 Since then, we've found and identified other
2 communications between some of these folks that show they
3 had specific responsibilities for MDI pricing and supply.
4 So I just don't think that's a fair characterization about
5 plaintiffs' position honoring agreements.

6 But the point ultimately is, Your Honor, it's
7 correct we hope maybe we don't need to raise these issues
8 later, but we will know better after we review the
9 production; and that's what we'll do.

10 THE COURT: And I think that's what you should do.
11 So I'm fine with that. I'm going to continue with the
12 plaintiffs.

13 MR. HARTLEY: Your Honor, we don't have anything
14 else to raise for the court now. If you wanted an update on
15 anything else beyond what was in our letter, we're happy to
16 address that or address any other questions the court has.

17 THE COURT: Okay. Let's move to Mr. Marovitz now.
18 There might be some things that you wanted to raise.

19 MR. MAROVITZ: Thank you, Your Honor. Again,
20 Andy Marovitz. And I mentioned a few of them. But a few, I
21 didn't quite get to. So I did mention that as of I think
22 November 10, the defendants in the case had already produced
23 something around 645,000 unstructured data documents. And
24 last week, domestic defendants, MCNS and BASF Corporation
25 produced another 3,000 and 16,000 documents respectively.

1 So what I want to -- and in addition to that, I should say,
2 the other domestic defendants intend to make rolling
3 productions in early December.

4 I guess the point that I wanted to really reinforce
5 with the court is that we've been pretty clear that we see
6 the substantial completion date as just that, but that we
7 intend to roll productions between, you know, earlier than
8 last week, and then including last week, and then in
9 December, throughout that time, up through March, so we're
10 not hanging onto everything until the end. We're trying to
11 really move this case forward. And I think the production
12 of documents that I just mentioned is really pretty good
13 evidence of that.

14 The other thing that I'll say is that -- and it's
15 just -- I know the court knows this, and I know the
16 plaintiffs know it, and we know it, too. The TAR debates
17 that we had and the document production debates that we had
18 in front of the special master and then Your Honor, you
19 know, were in many respects painful for the lawyers
20 involved, certainly were costly for the clients; and they
21 consumed a lot of time.

22 And our hope is that those are largely behind us
23 now and that we don't have to continue to relitigate those
24 issues over and over and over again. And I am concerned
25 that, you know, the substantial completion date may be

1 effected if we keep moving back to Square 1 on some of these
2 issues.

3 Again, I'm not trying to argue specifics. I'm just
4 being -- trying to be straightforward about, you know, our
5 anticipated date. It sort of assumes that we can continue
6 to work forward productively on actually producing documents
7 and not relitigating what we think has already been decided.

8 So those are the only points that I would raise on
9 behalf of the domestic defendants at this time, Judge. But
10 some of the lawyers for other domestics may have thoughts,
11 as well.

12 THE COURT: Sure. And I would be glad to listen
13 to those. Anyone want to join in?

14 (No response.)

15 THE COURT: Appears not. So I don't know if you
16 want to say anything in response to that, Mr. Hartley or
17 Ms. Jones. I'm not sure. If you do, fine; if you don't,
18 fine, as well.

19 MS. JONES: This is Ms. Jones. Briefly, we
20 appreciate Mr. Marovitz having a substantial completion
21 deadline in mind. That is something the plaintiffs are
22 rolling towards, as well. This case has been going on, as
23 the court knows, for several years; and we have been
24 productive.

25 You know, of that 645,000 documents, a large

1 percentage of them are the DOJ documents, which were ordered
2 years ago. And believe me, we have been through those. And
3 we're happy we got Dow's calendars, you know, 150,000 pages
4 of those last week; and we're already pouncing on these. So
5 we are just assuring the court that the minute that the
6 defendants produce documents, we are putting our teams to
7 work so that we can put this case to bed on the facts.

8 THE COURT: Okay. Mr. Terzaken, are you on? Is
9 there anything that you wanted to add to any of this?

10 MR. ELLIS: Your Honor, this is Abram Ellis from
11 Simpson Thacher, Mr. Terzaken's partner. Mr. Terzaken is
12 not able to join. But we don't have anything to update you
13 on from Covestro AG's perspective. We defer to Mr. Atkins
14 if there's anything for Wanhua.

15 MR. ATKINS: Your Honor, this is Mr. Atkins,
16 again, for Wanhua. We've got some -- a couple of issues
17 remaining on the translations that the plaintiffs provided
18 us, translations of search terms into Chinese.

19 We have, I think, one open item on the
20 meet-and-confer you instructed the parties to do regarding
21 the two nondefendant U.S. entities of the Wanhua
22 organization. Beyond that, we are in the process of
23 collecting data and organizing our search and production
24 from China.

25 THE COURT: Do the plaintiffs want to say

1 something with respect to Wanhua?

2 MR. LINDNER: This is Jason Lindner, Your Honor,
3 on behalf of plaintiffs. I believe Mr. Atkins'
4 characterization is generally correct. The parties took
5 this court's order regarding the holding and operations to
6 heart and have had a good meet-and-confer about it and have
7 come to some compromises.

8 There were a few translation issues that we've
9 received recently, and our translators are looking at them;
10 but it doesn't appear to be anything major to us and nothing
11 for this court to resolve at this time.

12 THE COURT: Okay. Thank you. Well, I mean, I
13 understand there are a number of issues that have to be
14 resolved here. And certainly, I think, as I said, with
15 respect to search terms, I think that Judge Francis in the
16 first instance is the right course to take. And hopefully,
17 you will talk over the next few days and make those
18 decisions.

19 But whatever each party has to do, well then you
20 do; and they'll either come before me or Judge Francis, and
21 I'll, of course, review everything Judge Francis does and
22 hopefully get things moving. I'm also encouraged by
23 domestic defendants' timeline in terms of completion of
24 production before the end of March. So I feel hopeful about
25 that.

1 Is there anything else you want to talk about
2 today? I am thinking that our next conference will be
3 Tuesday, January 18. I hope -- I'm going to say 1:15,
4 because I have a long conference at 12:00 that day; but I
5 don't think it will take more than an hour.

6 So if that's all right with everybody, unless --
7 and, of course, you know how to get to me if you need me
8 before then. All you have to do is present something, make
9 a call, we can set something up at any time. It's not that
10 difficult. So is there anything else that anybody wants to
11 bring up today from any party?

12 MS. JONES: Not from the plaintiffs, Your Honor.
13 Thank you.

14 MR. MAROVITZ: And not for the defendants either,
15 Your Honor. We appreciate it.

16 THE COURT: Okay then. Well, as I said, I'll
17 certainly wait to hear from you. And if I don't, then we'll
18 be talking on January 18 at 1:15.

19 MR. MAROVITZ: Thank you, Your Honor.

20 MR. HARTLEY: Thank you, Your Honor.

21 MS. JONES: Thank you.

22 THE COURT: That's eastern daylight savings, so
23 you all know.

24 MR. MAROVITZ: Right. Thanks so much.

25 (Court was adjourned.)

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C E R T I F I C A T E

I, Amanda M. Williamson, certify that the foregoing
is a correct transcript from the record of proceedings in
the above-titled matter.

S/Amanda M. Williamson _____